

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 09469/157001; 94.0016	
	Application Number 09/270,128-Conf. #2059	Filed March 16, 1999	
	First Named Inventor Thomas R. Miller		
	Art Unit 2123	Examiner K. Thangavelu	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>46,479</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ /Robert P. Lord/ Signature</p> <p>_____ Robert P. Lord Typed or printed name</p> <p>_____ (713) 228-8600 Telephone number</p> <p>_____ May 5, 2008 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Thomas R. Miller et al.

Confirmation No.: 2059

Application No.: 09/270,128

Art Unit: 2123

Filed: March 16, 1999

Examiner: K. Thangavelu

For: SIMULATION SYSTEM INCLUDING A
SIMULATOR AND A CASE MANAGER
ADAPTED FOR ORGANIZING DATA FILED
FOR THE SIMULATOR IN A TREE LIKE
STRUCTURE

MS AF
Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Authority

Applicant's claims have been rejected at least twice, so filing a Notice of Appeal with proper fee and a pre-appeal brief request for review is proper. *See* 35 USC § 134.

Disposition of Claims

Claims 1-27 are pending in the present application. Claims 1, 10, 15, 16, 20, 22, 24, and 26 are independent. The remaining claims depend, either directly or indirectly, from claims 1, 10, 16, 20, 22, 24, and 26.

Remarks

Claims 1, 10, 16, 20, 22-24, and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,151,582 (hereinafter "Huang") in view of the document entitled: "Object oriented modeling and Design" (hereinafter "Rumbaugh"). For the reasons set forth below, this rejection is respectfully traversed.

MPEP §2143 states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” In the Office Action dated February 5, 2008, the Examiner, in articulating the analysis used to reject the claims under 35 U.S.C. §103, has described the various claimed elements taught and not taught by Huang. *See*, Office Action dated February 5, 2008, at pages 3-15. Further, the Examiner has described the various claimed elements taught by Rumbaugh, which are not taught by Huang. *Id.* The Examiner then concludes by asserting that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Huang to include the teaching of Rumbaugh.

Using the above rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; ...” MPEP § 2143(A). Applicant respectfully submits that the Examiner has failed to do so.

If the Examiner does not produce a *prima facie* case, Applicant is under no obligation to submit evidence of non-obviousness. The initial evaluation of *prima facie* obviousness thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention. *See*, MPEP § 2142.

As an initial matter, Applicant reiterates all of the arguments presented in the response filed on November 7, 2007, which are hereby incorporated by reference. In addition, Applicant maintains the right to reiterate said arguments in all future responses and/or appeals.

The Examiner contends that Huang discloses both the existence of a plurality of sets and supersets and a tree-like structure for storing said plurality of sets and supersets. *See*, Office Action dated February 5, 2008, at pages 3-5. Applicants respectfully disagree with the Examiner’s contentions. Specifically, Applicants respectfully assert that the Examiner is mischaracterizing Huang, which is wholly improper.

Huang discloses a decision support system (DSS) for managing a supply chain. The DSS includes decision frames to view the chain from different user perspectives (*i.e.*, view

points), and to understand the potential effects of a user's decisions on the overall supply chain. *See*, Huang at Abstract and at column 1, lines 41-52. Huang further discloses the creation of "what-if" scenarios by a user to examine the effect of different operating parameters (*e.g.*, delivery frequency, target average inventory level, target customer service level, etc.) on the supply chain. A created scenario can be saved for and edited by other users. *See*, Huang at column 34, lines 55-65 and at column 94, lines 40-55. Huang never discusses (or even contemplates) storing the scenarios in a tree-like structure.

To the contrary, Huang does disclose that data domains are presented in tree-like structures. Huang discloses a data domain as a set of product, customer, and resource combinations for use in performing various analyses and in processing a particular user's view point. *See*, Huang at column 2, lines 1-5 and column 93, lines 37-65; and in FIG. 52. In fact, Huang explicitly teaches a new domain may be created from "a tree-like listing of all available products and product groupings and all available customer/customer groupings." *See*, Huang at column 104, lines 12-45, and at FIG. 52.

The Examiner is erroneously attempting to equate data domains and scenarios. *See*, Advisory Action dated April 29, 2008, at page 3, lines 20-22. It is abundantly clear from the discussion above, that a scenario is *not* equivalent to a data domain. Simply put, two separate and distinct terms (*i.e.*, scenario and data domain) as used in a single prior art reference cannot be twisted and contorted by an Examiner in such an improper manner to result in the two terms being equated. Accordingly, the equating of data domains and scenarios, as proposed by the Examiner, effectively requires mischaracterizing Huang, which is wholly improper.

Even assuming *arguendo* the Examiner's attempt to equate the scenarios, as disclosed by Huang, with the sets and supersets of claims 1, 10, 16, 20, 22, 24, and 26 is proper, Huang still fails to teach or suggest storing said scenarios (*i.e.*, sets and supersets) in a tree-like structure. As discussed above, the tree-liked structure disclosed by Huang stores only data domains, *not* scenarios. Accordingly, contrary to the Examiner's contentions, Huang fails to teach or suggest the storage of sets and supersets (*i.e.*, scenarios) in a tree-like structure, as recited in the independent claims.

Rumbaugh discloses the concept of inheritance in object-oriented programming languages. *See*, Rumbaugh at page 39. However, Applicant respectfully asserts Rumbaugh fails to teach or suggest what Huang lacks.

In view of the above, the Examiner's contentions do not support the rejections of independent claims 1, 10, 16, 20, 22, 24, and 26. Claim 23 depends directly from claim 22. Accordingly, the Examiner's contentions also do not support the rejection of claim 23, and withdrawal of this rejection is respectfully requested.

Claims 2-9, 11-14, 17-19, 21, 25, and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Huang, in view of Rumbaugh, in further view of U.S. Patent No. 5,835,566 (hereinafter "Cowgill"). For the reasons set forth below, this rejection is respectfully traversed.

As discussed above, the Examiner's contentions do not support the rejection of independent claims 1, 10, 16, 20, 22, 24, and 26. Claims 2-9, 11-14, 17-19, 21, 25, and 27 depend, either directly or indirectly, from independent claims 1, 10, 16, 20, 22, 24, and 26. Thus, the Examiner's contentions also do not support the rejection of 2-9, 11-14, 17-19, 21, 25, and 27, and are allowable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hung, in view of Rumbaugh, in further view of Cowgill, and still in further view of U.S. Patent No. 6,018,497 ("Gunsekara"). For the reasons set forth below, this rejection is respectfully traversed.

Even assuming the Examiner's attempt to equate the scenarios, as disclosed by Huang, with the sets and supersets of claim 15 is proper, Huang still fails to teach or suggest storing said scenarios (*i.e.*, sets and supersets) in a tree-like structure. The tree-like structure disclosed by Huang stores only data domains, **not** scenarios. Accordingly, contrary to the Examiner's contentions, Huang fails to teach or suggest the storage of sets and supersets (*i.e.*, scenarios) in a tree-like structure, as recited in the independent claims.

Rumbaugh discloses concept of inheritance in object-oriented programming languages. *See*, Rumbaugh at page 39. However, Applicant respectfully asserts Rumbaugh does not teach or suggest what Huang lacks.

Gunsekara teaches a simulation system responsive to plurality of sets of input data for simulating an earth formation located in the vicinity of an oilfield reservoir. *See*, Gunsekara at column 1, line 21 to column 2, line 3. However, Applicant respectfully asserts Gunsekara does not teach or suggest what Rumbaugh and Huang lacks.

Cowgill discloses a system for use in a telecommunications network containing a component to be tested ("UUT"), a system for, and method of, providing in-band and out-of-band signals to test and analyze the UUT. *See*, Cowgill at Abstract. However, Applicant respectfully asserts Cowgill does not teach or suggest what Gunsekara, Rumbaugh, and Huang lack.

In view of the above, the Examiner's contentions do not support the rejection of independent claim 15, and withdrawal of this rejection is respectfully requested.

Conclusion

In view of the above, the Examiner has failed to satisfy the requirements set out in MPEP §§ 2142 and 2143. Specifically, the Examiner has failed to show the prior art reference (or references when combined) teach or suggest all the limitations of independent claims 1, 10, 15, 16, 20, 22, 24, and 26. Accordingly, a favorable decision from the panel is respectfully requested. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 09469/157001; 94.0016).

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Respectfully submitted,

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